

STATE OF MICHIGAN
COURT OF APPEALS

JODY KEVIN HARWOOD,

Plaintiff-Appellee,

v

POLLY FAYE HARWOOD,

Defendant-Appellant.

UNPUBLISHED

September 15, 2011

No. 300558

Wayne Circuit Court

LC No. 06-625056-DO

Before: SAWYER, P.J., and JANSEN and DONOFRIO, JJ.

PER CURIAM.

Defendant appeals as of right from an order denying her motion for order to show cause. Defendant asserts that contrary to the finding of the circuit court, plaintiff has failed to satisfy the life insurance provision in the parties' consent judgment of divorce. We agree and thus reverse the judgment of the circuit court and remand.

The life insurance provision in issue provides as follows:

So long as Plaintiff is obligated to pay spousal support to the Defendant, he shall maintain term life insurance, so long as it is offered him at a reasonable cost through his employer, with Defendant Polly Harwood to be the beneficiary of a portion of Plaintiff's current life insurance, in the amount of \$500,000.00 of said term life insurance coverage, on Plaintiff's life. Plaintiff shall provide proof of coverage to Defendant at least yearly. This shall continue until further Order of the Court.

On order of the court, plaintiff provided a letter from his then employer indicating that he had \$237,000 basic life insurance, \$237,000 basic accidental death and dismemberment insurance and \$50,000 personal accident insurance. The court found that these policies satisfied the judgment.

Resolution of this appeal requires us to interpret the above provision of the consent judgment upon de novo review. *Reed v Reed*, 265 Mich App 131, 141; 693 NW2d 825 (2005). It is axiomatic in contract law "that competent persons shall have the utmost liberty of contracting and that their agreements voluntarily and fairly made shall be held valid and enforced in the courts" as written. *Terrien v Zwit*, 467 Mich 56, 71; 648 NW2d 602 (2002), quoting *Twin City Pipe Line Co v Harding Glass Co*, 283 US 353, 356; 51 S Ct 476; 75 L Ed 2d 1112 (1931);

see also *Rory v Continental Ins Co*, 473 Mich 457, 468; 703 NW2d 23 (2005). A consent judgment of divorce is a contract and must be interpreted with this general rule in mind. *Laffin v Laffin*, 280 Mich App 513, 517; 760 NW2d 738 (2008). “In ascertaining the meaning of a contract, [the court] give[s] the words used in the contract their plain and ordinary meaning that would be apparent to a reader of the instrument.” *Rory*, 473 Mich at 464.

The judgment of divorce unambiguously states that “term life insurance” is to be provided to serve as a guarantee that defendant will receive spousal support should plaintiff die before his obligation to pay spousal support is ended. Because the argument is not made that the basic life insurance policy is anything other than a term life policy, we assume that it is and that it is thus in conformity with the judgment.

However, the other two policies are not in keeping with the terms of the judgment. The judgment mentions nothing regarding *accident* insurance¹ and, absent any ambiguity, the lower court had an obligation to enforce the judgment as written. *Id.* at 468. Generally, accident insurance may indemnify against death resulting from an accident. Black’s Law Dictionary (9th ed), p 871 (indicating that covered losses under an accident insurance policy “may include expenses, time, suffering, or death”). However, should plaintiff be involved in any type of accident not resulting in death, he could collect on the policy and have no obligation to use any of those funds toward spousal support. Further, if plaintiff were to die of natural causes, the policy would not provide the required monies. The same is true of the accidental death and dismemberment policy.

The parties agreed that plaintiff would maintain “term life insurance” with defendant identified as a beneficiary to the extent of \$500,000. Although defendant could collect benefits under the personal accident insurance and accidental death and dismemberment insurance, these policies do not satisfy the terms of the judgment given that the circumstances under which such monies would be paid are limited in a manner inconsistent with a term life policy.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ Kathleen Jansen
/s/ Pat M. Donofrio

¹ “[A]n accident is an undesigned contingency, a casualty, a happening by chance, something out of the usual course of things, unusual, fortuitous, not anticipated, and not naturally to be expected.” *Frankenmuth Mut Ins Co v Kompus*, 135 Mich App 667, 678; 354 NW2d 303 (1984) (internal quotation marks and citations omitted).